

Chapter 62

1. Legislative Findings The City of Troy has the authority to grant Licenses and Franchises for Telecommunication Systems offering public or private line video, data or voice services using or crossing a street, highway, rights-of-way or easements in the City. This Ordinance is intended to minimize the disruption to the streets, highways, rights-of-way and easements and to require those who seek to construct a Telecommunication System to cooperate in the construction and the restoration of streets, highways, rights-of-way and easements of both overhead and underground lines. The City finds that it has too many unsightly overhead lines and poles in some sections of the City. They are proliferating, adversely affecting the public safety, detracting from property values and reaching maximum safe capacity of poles and underground spaces. The City further finds that public health, safety and welfare is better served by requiring installation of new utility lines and wires in underground conduit wherever practical.
2. Purpose The purpose of this ordinance is to regulate the granting of Licenses and Franchises for Telecommunication Systems other than cable television systems.
- ③. Definitions Unless the context specifically indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:
 - (1) City means the City of Troy, Michigan.
 - (2) Telecommunication Services include regulated and unregulated services offering to customers the transmission of 2-way interactive communication and associated usage.
 - (3) Telecommunication System is a system used or to be used to provide Telecommunication Service including public or private line video, data or voice service to another person, using or crossing a street, highway, rights-of-way or easements in the City other than cable television service offered pursuant to a Franchise granted under Chapter 63 of the City Code, as amended.
 - (4) Franchise is a non-exclusive, limited authorization to transact local business for the construction, maintenance and operation of a Telecommunication System in the City awarded by ordinance in the form of a contract and accepted by the Grantee.

(5) Grantee is an holder of a Telecommunication System License or Franchise granted pursuant to this ordinance.

(6) Gross Revenue shall mean all receipts collected by the Grantee for all telecommunication and related operations and services within the corporate limits of the City as well as any other revenue arising from operation or possession of this Franchise regardless of where billed. "Gross revenue" shall also include:

(a) Access charges paid to the Grantee by other carriers.

(b) The leases or re-sales of lines or circuit paths to third parties.

(c) All Telecommunications Service revenues charged on a flat rate basis.

(d) All Telecommunications Services charged on a usage sensitive or mileage basis.

(e) All revenues from local service.

(f) All revenues from authorized rental of conduit space.

(g) All revenues from authorized rentals of any portion of Grantee's System, including plant, facilities, or capacity leased to others.

(h) All other revenues collected from Grantee's telecommunication business pursued within the City, excluding third party billing arrangements not related to Grantee's telecommunication business.

(i) Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludible from Gross revenues from telecommunication business. "Gross revenue" does not include revenue uncollected from customers (bad debts) and sale or lease of customer service equipment, taxes, interconnection fees paid by Grantee to other telecommunications carriers, or other similar types of pass-through charges for which Grantee merely acts as a collecting agent and derives no economic benefit or "markup".

- (7) License is a written agreement granted by resolution for a Telecommunication System to use the rights-of-way, easements, highways, streets, alleys, and other places in the City for wires, poles, pipes, conduits or other public utility facilities, but not to transact local business with another person.
- (8) Person is any individual, firm, partnership, association, corporation, company or organization.
- (9) Subscriber is any Person who contracts with the Grantee for, or is in any manner provided with, Telecommunication Services.

4. City Approval Required

- (1) No Person shall install, construct, maintain or otherwise operate a Telecommunication System in the City without a telecommunication License and no person shall transact local business on a Telecommunication System in the City without a Franchise.
- (2) This ordinance shall apply to any existing cable television system operating pursuant to a Franchise awarded by the City which the Franchisee uses to transact local business operating a Telecommunication System. However, this ordinance exempts any existing institutional network operated by TCI of Oakland County, Inc., until the original TCI term of the Franchise expires, except to the extent that TCI or any other entity uses such network for commercial non-cable services.
- (3) Before offering or providing any Telecommunication Service, the Grantee shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Telecommunication Services from the appropriate federal, state and local authorities, if required, and shall submit to the City, upon the written request of the City, evidence of all such approvals, permits, authorizations or licenses.
- (4) Nothing in this ordinance shall be construed as a waiver of any codes, ordinances or regulations of the City or the City's right to require Grantee or persons utilizing the Telecommunication Service to secure appropriate permits or authorizations for such use. No fee or charge may be imposed upon a Grantee for any such permit or authorization, other than the standard fees or charges generally applicable to all persons for such permits or authorizations. Such standard fee or charge shall not be offset against the annual License fee or Franchise fee a Grantee is required to pay to the City under section 9 of this ordinance.

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5. Issuance

- (1) The City may grant one or more Licenses and Franchises for a Telecommunication System in the City subject to this Ordinance.
- (2) The City specifically reserves the right to grant, at any time, such additional Licenses and Franchises for a Telecommunication System as it deems appropriate. Additional Licenses and Franchises shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Grantee.
- (3) In the event a License application is filed proposing to install facilities within a Franchise territory which overlaps in whole or in part an existing area, a copy shall be served by the applicant by certified mail upon the current Grantee(s). Applicant shall notify Grantee of existing overlapping territory. Proof that a copy of the application has been served upon the current Grantee(s) shall be provided to the City. No application for overlapping territory shall be processed until proof of service has been furnished to the City. It is not the intent of this Ordinance to either require or prohibit overbuilding.
- (4) Applications for a new, renewed or amended Franchises shall be made in such form as the City may prescribe by resolution. New, renewed or amended Franchises which expand the scope of service shall be accompanied by a non-refundable \$5,000 partial prepayment of the Franchise formation fee.

6. Duration

Any License or Franchise and the rights, privileges, authority, and responsibilities established shall take effect and be in force from and after final acceptance. It shall continue in force and effect for a period established by the License or Franchise not exceeding fifteen (15) years, provided within thirty (30) days after the date of the City's final acceptance of a License or Franchise, the Grantee files with the City Clerk its unconditional acceptance of the License or Franchise, all required letters of credit, construction surety and insurance certificates, and pays to the City Clerk all reasonable costs actually incurred by the City in preparing, considering and awarding the License or Franchise, including legal, engineering, technical, publication and other expenses, to-wit: the Franchise formation fee described in Section 9. If a Grantee fails to timely comply with this section, it shall acquire no rights, privileges, or authority whatsoever from the City. The City Manager may extend the term of a License or Franchise for a period not exceeding one (1) year by written agreement with a Grantee on reasonable and necessary terms.

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7. Penalty Violation of any of the terms of this Chapter shall be misdemeanor punishable by a fine of up to Five Hundred (\$500.00) Dollars or ninety (90) days in jail or both, not excluding (in addition to) civil damages.
8. Rate Regulation The rates and charges of a Grantee subject to Franchise for the provision of Telecommunication Services and for related services (such as equipment rental, deposits, disconnection fees, and late payment fees) shall be subject to regulation by the City to the full extent authorized by federal or state law. The City may from time to time elect not to regulate Grantee's rates and charges, and any such election shall not waive the City's rights to regulate in the future. Changes to rates and charges shall only be made after notice, hearing and other requirements provided by law.
9. Franchise Formation and Annual Fee Payments by Grantee
- (1) For the reason that the streets, highways and rights-of-way or easements to be used by Grantee in the operation of its Telecommunication System within the boundaries of the City are valuable public properties, some of which are acquired and maintained by the City at great expense to its taxpayers, and that the grant to Grantee of the use of said streets, highways, rights-of-way or easements is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, a Grantee shall pay:
- (a) A Franchise formation fee (i) for Franchises of \$10,000.00; or, (ii) for Licenses of \$ 2,000.00; and
- (b) An annual fee equal to the lesser of (i) 5% of its gross revenue, or (ii) an amount determined as set forth in subsection (2).
- (2) The fee to be charged to a Grantee under clause (ii) of subsection 1(b) shall be Grantee's allocated share of the following amounts:
- The estimated actual cost (excluding acquisition costs incurred by the City as a consequence of permitting Grantee to occupy a portion of the public rights-of-ways and in mediating disputes between the citizens of the City and Grantee.
- The estimated actual costs referred to in subsection 2(b) shall be calculated every three years by the City Finance Director and shall be subject to approval by the City Council following a public hearing. The costs referred to in subsection 2(b) shall be allocated among all of the Grantees based on their per linear foot (not number of lines or capacity) of the Telecommunication Systems located upon, over, across or under the roads, bridges, streets, rights-of-way and easements in the City.

The annual fee required by subsection (1) may be determined using:

- (a) A percentage of gross revenues not exceeding five (5%) per cent; or
- (b) \$0.40 per linear foot of underground and \$0.25 per linear foot of overhead lines, wires, cables, poles, conduits and like structures, erections and fixtures upon, over, across, or under the roads, bridges, streets, public rights-of-way and easements in the City.

(3) Miscellaneous fee-considerations:

- (a) Grantees sharing the same conduit shall each pay a full fee.
- (b) Grantees sending signals over another Grantee's existing line or a line that is leased to another and upon which fees are already paid are not subject to additional fees.
- (c) Grantees using the same line to provide cable television service and to provide Telecommunications Services shall be subject to both a cable television franchise fee and all fees set by this Chapter.

(4) Grantee shall pay to the City for each quarter an amount equal to one fourth (1/4) of the minimum annual fee, calculated on the basis of a twelve-month compensation year. Grantee shall forward by check or money order an amount equal to the quarterly payment by noon of the twenty-fifth day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(5) In the event any quarterly payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. Acceptance of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this Franchise ordinance or otherwise.

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- (6) In the event the 5% of gross revenue option is utilized, Grantee shall file annually with the City Manager no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Telecommunication System within the City. Said statement shall be prepared in compliance with general accepted accounting practices and auditing standards. This statement of revenues shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement of revenues shall be certified by an officer of the Grantee whose statement shall accompany the statement of revenues.

Any transactions which have the effect of circumventing payment of required Franchise fees and/or evasion of payment of Franchise fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

- (7) License and Franchise fees shall be in addition to any other tax, charge, fee, or payment due the City by a Grantee.

10. New Developments

- (1) Grantee may, from time to time, implement new services and developments allowed by law. A Grantee may not provide cable television services as defined by the U.S. Cable Communication Policy Act of 1984.

- (2) In addition to those matters required in a Franchise, Grantees make the following express acknowledgements:

- (a) That the City has the right to make reasonable amendments to this ordinance which do not materially increase any financial, economic or performance burden to the detriment of a Grantee during the term of the License or Franchise upon ninety (90) days' notice to the Grantee, or without notice with respect to an emergency amendment. It further recognizes and agrees that the City shall in no way be bound to renew or extend the License or Franchise at the end of any License or Franchise term and that it may be deemed a mere licensee at the expiration thereof.
- (b) That a Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of the failure of City to have the authority to grant all or any part of a License or Franchise. A Grantee expressly acknowledges that on accepting a License or Franchise it did so relying on its own investigation and understanding of the power and authority of the City.

- (c) By acceptance of a License or Franchise a Grantee acknowledges that it has not been induced to enter into a License or Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of City or by any other third person concerning any term or condition of a License or Franchise not expressed in this Ordinance.
- (d) Grantee further acknowledges by the acceptance of a License or Franchise that it has carefully read its terms and conditions, and does accept all of the risks of the meaning of such terms and conditions.
- (3) However, if any such state or federal law or regulation shall require a Grantee to perform any service, or shall allow a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the License or Franchise or of any law or regulation of the City, then as soon as possible, a Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws and regulations of the City or the License and Franchise. Notwithstanding such conflict, the Grantee shall comply with the terms of the License or Franchise unless released by the City.
- (4) If any provision of a License or Franchise is held by any court of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule or regulation, said provision may be considered a separate, distinct and independent part of the License or Franchise, and such holding shall not affect the validity and enforceability of all other provisions if the City so determines. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with the law, rules or regulations said provision shall return to full force and effect and shall be binding on the parties.
- (5) If the parties determine that a material provision of a License or Franchise is affected by action of a court or of the state or federal Government, the parties shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of the License and Franchise.

11. Liability

- (1) A Grantee shall indemnify and hold harmless the City as set forth in the License or Franchise at all times during the life of a License or Franchise and will pay all damages and penalties which the City may be required to pay as a result of granting a License or Franchise to Grantee.

- (2) A Grantee shall at all times during the life of a License or Franchise carry and require its contractors and subcontractors to carry out public liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the City as set forth in the License or Franchise. All required insurance coverage shall provide for thirty (30) day notice to the City in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Failure of the Grantee to provide appropriate insurance certificates to the City within sixty (60) days after the execution of a License or Franchise shall render the License or Franchise null and void.

12. General Capability

- (1) Further, if the Grantee of a Franchise, provides a new service, facility, equipment, fee or grant to any other community which it serves within the State of Michigan, the same shall be provided in or to the City. City shall waive this requirement in a Franchise upon an affirmative demonstration that such service would be undesirable, impractical, infeasible or uneconomical in the City due to population, density or other relevant factors.
- (2) The Grantee of a Franchise shall allow the City to access the Telecommunication System from any city buildings, police stations, fire stations, other public buildings, each school licensed by the State of Michigan, and each public library within 500 feet of the Telecommunication System on fees, terms and conditions set forth in the Franchise.
- (3) Only in the event of a state or national emergency or other urgent community need, a Grantee of a franchise shall, upon request of City, make available its facilities to the City for the duration of the emergency.
- (4) To the extent feasible, and subject to reasonable availability and agreement among the franchisees concerning maintenance, access and security, a Telecommunication System shall be interconnected with other Telecommunication Systems within the City for the purpose of facilitating the provision of universal service in the City. Interconnecting may be done by direct cable or fiber optical connection, microwave link, satellite, or other appropriate method. The cost of such interconnection shall be equally shared by each Grantee. A Grantee shall not impose any discriminatory or punitive interconnection fee on a non-Subscriber. A Grantee shall not refuse or delay access service or be unreasonable in connecting another Grantee to the Telecommunication System or refuse or delay access service by any person to another Telecommunication System.

13. Conditions of Street Occupancy

A Grantee shall not commence construction upon, over, across, or under the roads, bridges, streets, rights-of-way or easements in the City without first obtaining a construction permit as required under Chapter 33 of the City Code, as amended, which shall apply to the construction of a Telecommunication System.

14. Technical and Construction Standards

(1) Each Grantee shall construct, install and maintain its Telecommunication System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards established by the Federal Communications Commission or state agency.

(2) In any event, the Telecommunication System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.

(3) All working facilities, conditions, and procedures, used or occurring during construction of the System shall comply with the standards of the Occupational Safety and Health Administration.

(4) Construction, installation and maintenance of a Telecommunication System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted industry construction procedures and practices and working through existing committees and organizations.

(5) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

(6) A Grantee shall join the Miss Dig program.

(7) When Grantee meets recognized engineering standards and the City, at its option, requests additional linear line footage, then the Grantee shall not be subject to the linear foot fee for such additional footage.

15. Maps, Records, and Reports

(1) A Grantee shall annually provide the City with current maps of its existing and proposed installations in a standardized format for use with the City's G.I.S. data system unless no changes have occurred in the previously submitted map.

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- (2) The Grantee of a Franchise shall annually file with the City Clerk fifteen copies (15) of its annual financial reports, including its annual income statement, a balance sheet, and a statement of its properties devoted to Telecommunication System operations. A Grantee shall submit such reasonable information as may be requested by the City with respect to its property and revenues, expenses or operations within the City. All information provided to the City shall be maintained by the City as proprietary and confidential.
- (3) An accurate and comprehensive file shall be kept by a Franchise Grantee of all Subscriber and user complaints regarding the Telecommunication System. A procedure shall be established by the Grantee by the time of installation of the system to quickly and reasonably remedy complaints to the satisfaction of the City. Complete records of Grantee's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.
- (4) Grantee shall submit to the City such other reasonable information or reports in such form and at such times as the City may request.
- (5) In the event the 5% of gross revenue option is utilized, subject to the privacy rights of Grantee, this Ordinance, federal and state laws and regulations, a Franchise Grantee shall keep open books and records relating to the financial operations of the Telecommunication System provided to the City. The City shall have the right to inspect, during normal business hours, upon a two-day notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the financial operation of the Telecommunication System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential.
- (6) a. Subject to the privacy rights of Grantee and this Ordinance and to federal and state laws and regulations, a Franchise Grantee shall keep open all non-financial books and records relating to the operations of the Telecommunication System provided to the City. The City shall have the right to inspect, during normal business hours, upon a two-day notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the Telecommunication System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential.

b. A Grantee shall allow the City to make inspections of any of the Grantee's Telecommunication Systems within the City's boundaries at any time upon one (1) day notice or, in case of emergency, upon demand without notice.

(7) The refusal of the Grantee to file any of the records or reports and inspections required to be provided to the City under this section shall be deemed a material breach, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.

(8) Any material, false, misleading statement, or representation knowingly made by the Grantee in any report shall be deemed a material breach of the License or Franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.

16. Waiver A Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party relating to the City's Franchise or License. A Grantee agrees to abide by all provisions of this Ordinance and its License and Franchise.

17. Sale or Transfer of Rights of Franchises

) Neither the Franchise nor any of Grantee's interest therein or in the facilities shall be sold, assigned, transferred, pledged, leased, sublet, hypothecated or mortgaged in any manner, in whole or in part, to any person or entity, nor shall title thereto, either legal or equitable, or any right or interest therein, or any property or assets relating to this Franchise or the facilities, pass to or vest in any person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Grantee shall not otherwise provide service to a person or entity who the City contends is required to obtain a franchise from the City and who lacks such franchise. Nothing herein shall prevent Grantee from assigning its rights and obligations to an affiliate (defined as any entity directly owned by Grantee or a parent entity of Grantee) or subsidiary of Grantee upon notice to the City. Any assignment or transfer to a subsidiary or affiliate of Grantee shall not relieve Grantee of its liability hereunder. Further, nothing herein shall prevent or prohibit Grantee or any of its parents, subsidiaries or affiliates, from granting a security interest in the Franchise or the facilities arising from a financing transaction. The grant or waiver of any one or more of said consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any said consent constitute a waiver of any other rights of the City. In the event of a foreclosure proceeding pursuant to the enforcement of a security interest granted by Grantee, or

any parent or subsidiary of Grantee, the City shall have the right to approve the purchaser of the Franchise and/or the facilities at a foreclosure sale, which approval shall not be unreasonably withheld or unduly delayed. The prohibition against sales, assignments, transfers and similar actions shall also fully apply to any transfer of control of Grantee ("Control") and such transfer of Control shall also require the prior written approval of the City which approval shall not be unreasonably withheld or unduly delayed.

- (2) No Franchise nor any part or portion of its interest in the Franchise may be sold, transferred or assigned until the facilities, equipment and personnel which the Grantee has proposed in the current Franchise application to provide and install pursuant to the Franchise are one hundred (100%) percent completed and operational for a minimum period of three (3) years except to Grantee's parent, affiliate or subsidiary.
- (3) Any attempted transfer of the Franchise, facilities, Control or similar action by Grantee in violation of this Section shall be ineffective and void and shall constitute a material event of default by Grantee.

18. Construction and Performance Guarantee and Letter of Credit

A Grantee shall, prior to construction and within thirty (30) days of the execution of a License or Franchise, file with the City Clerk, a letter of credit or cash deposit in a reasonable amount set by the terms of the License or Franchise based upon the construction cost of the lines to be installed upon, over, across, or under the roads, bridges, streets, rights-of-way or easements in the City. The Grantee and the City Engineer may make arrangements for the periodic release of the cash deposit or letter of credit in proportionate amounts as progress is made, as provided in Chapter 33.

19. Termination In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to terminate a License or Franchise and all rights and privileges of a Grantee in any of the following events or for any of the following reasons:

- (1) A Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the License or Franchise or has, by act or omission, violated any term or condition; or
- (2) A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (3) All or part of a Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within ninety (90) days from such sale; or

- (4) A Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City under the License or Franchise; or
- (5) City condemns all of the property of a Grantee within the City by the lawful exercise of eminent domain.
- (6) The Grantee abandons the Telecommunication System or fails to seek renewal of its License or Franchise.
- (7) No termination, except for reason of condemnation, shall be effective unless or until the City shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to Grantee and an opportunity for Grantee to be heard on the proposed resolution.

20. Removal

- (1) Upon expiration or termination of a License or Franchise, if the License or Franchise is not renewed, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the License or Franchise. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the License or Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the License or Franchise. Underground cable and conduit in the streets and rights-of-way which is not removed shall be deemed abandoned and title shall be vested in the City.

- (2) Upon expiration, termination or revocation of a License or Franchise, if the License or Franchise is not renewed, a Grantee, at its sole expense, shall, unless relieved of the obligation by the City, remove, from the streets all above ground elements of the Telecommunication System, including but not limited to pedestal mounted terminal boxes, and lines attached to or suspended from poles.
- (3) Grantee shall apply for and obtain such encroachment permits, Licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the streets and rights-of-way to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than twelve (12) months.

21. Continuity of Service It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee of a Franchise are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the Telecommunication System or the City terminates, revokes or fails to renew a Franchise within a reasonable time, a Grantee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of Grantee, the current Grantee shall cooperate with the new Grantee in maintaining continuity of service to all Subscribers. In the event that interruption of service is required by a Grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the impact on Subscribers is at a minimum. Records of such interruption shall be kept.
22. Acceptance of Agreement and Incorporation of Application and Ordinance by Reference Upon execution of a License or Franchise by a Grantee, the Grantee agrees to be bound by all of its terms and conditions and accepts unconditionally the Franchise and promises to comply with and abide by all of their terms, provisions and conditions. A Grantee also agrees to provide all services set forth in its application and proposal, and, by its acceptance of the License or Franchise, a Grantee specifically grants and agrees that its application and proposal is thereby incorporated by reference and made a part of the License or Franchise. In addition, a Grantee specifically agrees that this Ordinance of the City is incorporated by reference and made a part of the License or Franchise. In the event of a conflict between the application and proposal of the Grantee, the Ordinance, and the License or Franchise, the Ordinance shall prevail.

23. Severability If any section, subsection, sentence, clause, phrase or word of the License or Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render invalid nor terminate the License or Franchise.

24. Tampering and Fraudulent Connections or Sales

(1) No person, whether or not a Subscriber or user to the Telecommunication System, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the Grantee, or to commit any act with an intent to cause such removal or damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the Grantee with the intent to obtain a signal or impulse from the Telecommunication System without authorization from or compensation to the Grantee, or obtain Telecommunications Service, or sell, rent, offer or advertise for sale, rental or use any instrument, apparatus, device or plans, specifications, or instructions for making or assembling the same to connect to the Grantee's Telecommunication System with intent to cheat or defraud the Grantee of any lawful charge to which it is entitled.

(2) The prohibitions, penalties and remedies set forth in this section are in addition to any prohibitions, penalties and remedies for theft of service provided by state and federal law.

25. Equal Application The provisions of this ordinance shall be imposed upon and enforced against all Telecommunication Systems in the City requiring a License or Franchise under state law from the City.

26. Compliance with Laws All Grantees and the City shall comply with all laws, rules, regulations and orders in the exercise and performance of their rights and obligations under this ordinance and under any Franchise.

27. Most-Favored Communities Clause.

(1) In the event a Franchise Grantee enters into an agreement with a public entity in Oakland County, Macomb County or Wayne County, excluding Detroit, and agrees to a formula or method for determining franchise fees which if applied in the City would yield greater revenues than the formula or method set forth in the franchise for the right to operate a Telecommunication System, the Grantee shall grant a pro rata credit to its Troy subscribers so as to cause a redistribution of the excess to Troy subscribers.

Chapter 62 - Telecommunications Ordinance

- (2) Telecommunication services to the City shall be charged at a rate no higher than that charged to any other governmental, public or private subscriber.

Ordinance No.

**AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF
ORDINANCES REGARDING TELECOMMUNICATIONS SYSTEMS**

The City of Troy Ordains:

Section 1. That Chapter 62 of the Code of Ordinances shall be amended to read as follows:

**Chapter 62
Telecommunications Ordinance
Troy, Michigan**

1. Legislative Findings.

The City of Troy has the authority under state and federal constitutional and statutory law to regulate Telecommunications Systems offering public or private line video, data, or voice services using or crossing a street, highway, rights-of-way, or easements in the City. This Ordinance is intended to minimize the disruption to the streets, highways, rights-of-way, and easements and to require those who seek to construct a Telecommunications System to cooperate in the construction of both overhead and underground lines and the restoration of streets, highways, rights-of-way and easements. The City finds that it has too many unsightly overhead lines and poles in some sections of the City. They are proliferating, adversely affecting the public safety, detracting from property values, and reaching maximum safe capacity of poles and underground spaces. The City further finds that public health, safety, and welfare is better served by requiring installation of new utility lines and wires in underground conduit wherever practical.

2. Purpose.

The purpose of this ordinance is to regulate the granting of Licenses and Permits for Telecommunications Systems other than cable television systems.

3. Definitions.

Unless the context specifically indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:

- (1) City means the City of Troy, Michigan.

- (2) *Grantee* is any holder of a Telecommunications System License or Permit granted pursuant to this ordinance.
- (3) *Gross Revenue* shall mean all receipts collected by the Grantee for all telecommunications and related operations and services within the corporate limits of the City as well as any other revenue arising from operation or possession of a Permit regardless of where billed. Gross Revenue shall also include:
 - (a) Access charges paid to the Grantee by other carriers.
 - (b) The leases or re-sales of lines or circuit paths to third parties.
 - (c) All Telecommunications Service revenues charged on a flat rate basis.
 - (d) All Telecommunications Services charged on a usage sensitive or mileage basis.
 - (e) All revenues from local services.
 - (f) All revenues from authorized rental of conduit space.
 - (g) All revenues from authorized rentals of any portion of Grantee's Systems, including plant, facilities, or capacity leased to others.
 - (h) All other revenues collected from Grantee's telecommunications business pursued within the City, excluding third party billing arrangements not related to Grantee's telecommunications business.
 - (i) Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludible from Gross Revenues from telecommunications business. "Gross Revenue" does not include revenue uncollected from customers (bad debts) and sale or lease of customer service equipment, taxes,

interconnection fees paid by Grantee to other telecommunications carriers, or other similar types of pass-through charges for which Grantee merely acts as a collecting agent and derives no economic benefit or "markup".

- (4) *License* is a written agreement granted by resolution for a Telecommunications System to use the rights-of-way easements, highways, streets, alleys, and other public places in the City for wires, poles, pipes, conduits, or other public utility facilities, but not to transact local business with another person.
- (5) *Permit* is a non-exclusive, limited authorization to transact local business for the construction, maintenance, and operation of a Telecommunications System in the City awarded by ordinance in the form of contract and accepted by the Grantee.
- (6) *Person* is any individual, firm, partnership, association, corporation, company, or organization.
- (7) *Subscriber* is any Person who contracts with the Grantee for, or is in any manner provided, Telecommunications Services.
- (8) *Telecommunications Services* include regulated and unregulated services offering to customers the transmission of 2-way interactive communication and associated usage.
- (9) *Telecommunications System* is a system used or to be used to provide Telecommunications Service, including public or private line video, data, or voice service to another person, using or crossing a street, highway, rights-of-way, or easements in the City, other than cable television service offered pursuant to a Franchise granted under Chapter 63 of the City Code, as amended.

4. City Approval Required.

- (1) No Person shall install, construct, or maintain a Telecommunications System in the City without a telecommunications License or Permit.
- (2) This ordinance shall apply to any existing cable television system operating pursuant to a Franchise awarded by the City which the Franchisee uses to transact local business

operating a Telecommunications System.

- (3) Before offering or providing any Telecommunications Service, the Grantee shall obtain any and all regulatory approvals, permits, authorizations, or licenses for the offering or provision of such Telecommunications Services from the appropriate federal, state, and local authorities, if required, and shall submit to the City, upon the written request of the City, evidence of all such approvals, permits, authorizations, or licenses.
- (4) Nothing in this ordinance shall be construed as a waiver of any codes, ordinances, or regulations of the City or the City's right to require Grantee or persons utilizing the Telecommunications Service to secure appropriate permits or authorizations for such use. No fee or charge may be imposed upon a Grantee for any such permit or authorization, other than the standard fees or charges generally applicable to all persons for such permits or authorizations. Such standard fee or charge shall not be offset against the annual License fee or Permit fee a Grantee is required to pay to the City under section 9 of this ordinance.

(5) Issuance.

- (1) The City may grant one or more Licenses and Permits for a Telecommunications System in the City subject to this Ordinance.
- (2) The City specifically reserves the right to grant, at any time, such additional Licenses and Permits for a Telecommunications System as it deems appropriate. Additional Licenses and Permits shall not be deemed to modify, revoke, terminate, or damage any rights previously granted to any other Grantee.
- (3) In the event an application is filed proposing to install facilities within a Permit territory which overlaps in whole or in part an existing area, a copy shall be served by the applicant by certified mail upon the current Grantee(s). Applicant shall notify Grantee of existing overlapping territory. Proof that a copy of the application has been served upon the current Grantee(s) shall be

provided to the City. No application for overlapping territory shall be processed until proof of service has been furnished to the City. It is not the intent of this Ordinance to either require or prohibit overbuilding.

- (4) An applications for a new, renewed, or amended Permit shall be made in such form as the City may prescribe by resolution. A new, renewed, or amended Permit which expands the scope of service shall be accompanied by a non-refundable \$5,000 partial prepayment of the Permit formation fee.

6. Duration.

Any License or Permit and its rights, privileges, authority, and responsibilities shall take effect and be in force from and after final acceptance. It shall continue in force and effect for a period established by the License or Permit not exceeding fifteen (15) years, provided that, within thirty (30) days after the date of the City's final acceptance of a License or Permit, the Grantee files with the City Clerk its unconditional acceptance of the License or Permit, all required letters of credit, and all required construction surety and insurance certificates, and pays to the City Clerk all reasonable costs actually incurred by the City in preparing, considering, and awarding the License or Permit, including legal, engineering, technical, publication, and other expenses, including, the Permit formation fee described in Section 9. If a Grantee fails to timely comply with this section, it shall acquire no rights, privileges, or authority whatsoever from the City. The City Manager may extend the term of a License or Permit for a period not exceeding one (1) year by written agreement with a Grantee on reasonable and necessary terms.

7. Penalty.

Violation of any of the terms of this Chapter shall be a misdemeanor punishable by a fine of up to Five Hundred (\$500.00) Dollars or ninety (90) days in jail or both, not excluding (in addition to) civil damages.

8. Rate Regulation.

The rates and charges required of a Grantee to obtain a Permit or License for the provision of Telecommunications Services and for related services (such as equipment rental, deposits, disconnect fees, and late payment fees) shall be subject to regulation by the City to the full extent authorized by federal or state law. Changes to rates and charges shall only be made after notice, hearing, and other requirements of federal or state law.

9. Permit and License Formation and Annual Fee Payments by Grantee.

- (1) For the reason that the streets, highways, and rights-of-way or easements to be used by Grantee in the operation of its Telecommunications System within the boundaries of the City are valuable public properties, some of which are acquired and maintained by the City at great expense to its taxpayers, and that the grant to Grantee of the use of said streets, highways, rights-of-way, or easements is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, a Grantee shall pay:**

 - (a) A formation fee (i) for Permits: \$10,000.00; or (ii) for Licenses: \$2,000.00; and**
 - (b) An annual fee equal to (i) 5% of its gross revenue for Permits, or (ii) an amount determined as set forth in subsections (2) and (3).**
- (2) The fee to be charged to a Grantee under clause (ii) of subsection (1)(b) shall be Grantee's allocated share of the following amounts:**

 - (a) The estimated actual cost, excluding acquisition costs incurred by the City, as a consequence of permitting Grantee to occupy a portion of the public rights-of-ways and in mediating disputes between the citizens of the City and Grantee.**
 - (b) The estimated actual costs referred to in subsection (a) shall be calculated every five (5) years by the City Finance Director and shall be subject to approval by the City Council following a public hearing. The costs referred to in subsection (a) shall be allocated among all of the Grantees based on their per linear foot calculation (not number of lines or capacity) of the Telecommunications Systems located upon, over, across, or under the roads, bridges, streets, rights-of-way and easements in the City.**
- (3) The annual fee required by subsection (1)(b) may be determined using:**

- (a) A percentage of gross revenues not exceeding five (5%) per cent for Permits; or
 - (b) Initially, \$0.40 per linear foot of underground and \$0.25 per linear foot of overhead lines, wires, cables, poles, conduits, and like structures, erections and fixtures upon, over, across, or under the roads, bridges, streets, public rights-of-way and easements in the City for Licenses or Permits. Subject to recalculation every five (5) years under subsection (2)(b).
- (4) Miscellaneous fee considerations:
 - (a) Grantees sharing the same conduit shall each pay a full fee.
 - (b) Grantees sending signals over existing lines owned by another Telecommunications System for which fees are already paid are not subject to additional fees.
 - (c) Grantees using the same line to provide cable television service and to provide Telecommunications Services shall be subject to both a cable television franchise fee and all License or Permit fees set by this Chapter.
 - (d) The City Council may in its discretion exempt from License or Permit fees a Telecommunications System lawfully operated by a public school district or other governmental body created by state law which does not sell Telecommunications Services to Subscribers.
- (5) Grantee shall pay to the City for each quarter an amount equal to one fourth (1/4) of the minimum annual fee, calculated on the basis of a twelve-month compensation year. Grantee shall forward by check or money order an amount equal to the quarterly payment by noon of the twenty-fifth day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

- (6) In the event any quarterly payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at a ten percent (10%) annual percentage rate of the total amount past due. Acceptance of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this ordinance or otherwise.
- (7) In the event the 5% of gross revenue option is utilized, Grantee shall file annually with the City Manager, no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Telecommunications System within the City. Said statement shall be prepared in compliance with general accepted accounting practices and auditing standards. This statement of revenues shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement of revenues shall be certified by an officer of the Grantee whose statement shall accompany the statement of revenues.

Any transactions which have the effect of circumventing payment of required fees and/or evasion of payment of fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which enable a Grantee to evade the actual collection of revenues for business conducted by Grantee are prohibited.

- (8) License and Permit fees shall be in addition to any other tax, charge, fee or payment due the City by a Grantee.

10. New Developments.

- (1) Grantee may, from time to time, implement new services and developments allowed by law. A Grantee may not provide cable television services as defined by the U.S. Cable Communication Policy Act of 1984.
- (2) In addition to those matters required in a Permit, Grantees must make the following express acknowledgments:
 - (a) That the City has the right to make reasonable amendments to this ordinance which do not materially increase any financial, economic or performance burden to the detriment of a

Grantee during the term of the License or Permit upon ninety (90) days notice to the Grantee, or without notice with respect to an emergency amendment. It further recognizes and agrees that the City shall in no way be bound to renew or extend the License or Permit at the end of any License or Permit term.

- (b) That a Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of the failure of City to have the authority to grant all or any part of a License or Permit. A Grantee must expressly acknowledge that on accepting a License or Permit it does so relying on its own investigation and understanding of the power and authority of the City.
 - (c) That acceptance of a License or Permit a Grantee acknowledges that it has not been induced to enter into a License or Permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of City or by any other third person concerning any term or condition of a License or Permit not expressed in this Ordinance.
 - (d) That Grantee further acknowledges by the acceptance of a License or Permit that it has carefully read its terms and conditions, and does accept all of the risks of the meaning of such terms and conditions.
- (3) However, if any such state or federal law or regulation shall require a Grantee to perform any service, or shall allow a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the License or Permit or of any law or regulation of the City, then as soon as possible, a Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws and regulations of the City or the License and Permit. Notwithstanding such conflict, the Grantee shall comply with the terms of the License or Permit unless released by the City.

- (4) If any provision of a License or Permit is held by any court of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule, or regulation, said provision may be considered a separate, distinct, and independent part of the License or Permit, and such holding shall not affect the validity and enforceability of all other provisions if the City so determines. In the event that such law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with the law, rules, or regulations, said provision shall return to full force and effect and shall be binding on the parties.
- (5) If the parties determine that a material provision of a License or Permit is affected by action of a court or of the state or federal Government, the parties shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of the License and Permit.

11. Liability.

- (1) A Grantee shall indemnify and hold harmless the City as set forth in the License or Permit at all times during the life of a License or Permit and will pay all damages and penalties which the City may be required to pay as a result of granting a License or Permit to Grantee.
- (2) A Grantee shall at all times during the life of a License or Permit carry and require its contractors and subcontractors to carry public liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the City as set forth in the License or Permit. All required insurance coverage shall provide for thirty (30) day notice to the City in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Failure of the Grantee to provide appropriate insurance certificates to the City within sixty (60) days after the execution of a License or Permit shall render the License or Permit null and void.

12. General Capability.

- (1) The Grantee of a Permit shall allow the City to access the Telecommunications System from any city buildings, police stations, fire stations, other public buildings, each school licensed by the State of Michigan, and each public library within 500 feet of the Telecommunication System on fees, terms, and conditions set forth in the Permit.
- (2) In the event of a state or national emergency or other urgent local community need, a Grantee of a Permit shall, upon request of City, make available its facilities to the City for the duration of the emergency.

13. Conditions of Street Occupancy.

A Grantee shall not commence construction upon, over, across, or under the roads, bridges, streets, rights-of-way, or easements in the City without first obtaining a construction permit as required under Chapter 33 of the City Code, as amended, which shall apply to the construction of a Telecommunications System.

14. Technical and Construction Standards.

- (1) Each Grantee shall construct, install, and maintain its Telecommunications System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards established by the Federal Communications Commission or state agency.
- (2) In any event, the Telecommunications System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.
- (3) All working facilities, conditions, and procedures used or occurring during construction of the System shall comply with the standards of the Occupational Safety and Health Administration.
- (4) Construction, installation, and maintenance of a Telecommunications System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City, following accepted industry construction procedures and practices and working

through existing committees and organizations.

- (5) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- (6) A Grantee shall join the Miss Dig program.
- (7) When Grantee meets recognized engineering standards and the City, at its option, requests additional linear line footage, then the Grantee shall not be subject to the linear foot fee for such additional footage.

15. Maps, Records, and Reports.

- (1) A Grantee shall annually provide the City with current maps of its existing and proposed installations in standardized format for use with the City's G.I.S. data system unless no changes have occurred in the previously submitted map.
- (2) A Grantee of a Permit paying fees based on gross revenues shall annually file with the City Clerk fifteen copies (15) of its annual income statement and a balance sheet.
- (3) A Grantee shall submit such reasonable information as may be requested by the City with respect to its property and revenues, expenses, or operations within the City necessary to perform its obligations under state or federal laws. All information provided to the City shall be maintained by the City as proprietary and confidential, to the extent permitted by law.
- (4) Grantee shall submit to the City such other reasonable information or reports in such form and at such times as the City may request.
- (5) In the event the 5% of gross revenues option is utilized, subject to the privacy rights of Grantee, this Ordinance, and federal and state laws and regulations, a Permit Grantee shall keep open books and records relating to the financial operations of the Telecommunications System provided to the City. The City shall have the right to inspect, during normal business hours, upon a two-day notice, all books, records, maps, plans, service complaint logs, performance test result and other like materials of the Grantee which relate to the

financial operation of the Telecommunication System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential.

- (6) (a) Subject to the privacy rights of Grantee and this Ordinance and to federal and state laws and regulations, a Grantee shall keep open all non-financial books and records relating to the operations of the Telecommunication System provided to the City. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential to the extent permitted by law.

(b) A Grantee shall allow the City to make inspections of any of the Grantee's Telecommunications Systems within the City's boundaries at any time upon one (1) day notice or, in case of emergency, upon demand without notice.

- (7) The refusal of the Grantee to file any of the records or reports and inspections required to be provided to the City under this section shall be deemed a material breach, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.
- (8) Any material false or misleading statement or representation knowingly made by the Grantee in any report shall be deemed a material breach of the License or Permit, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.

16. Waiver.

A Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party relating to the City's Permit or License. A Grantee agrees to abide by all provisions of this Ordinance and its License and Permit.

17. Sale or Transfer of Licenses or Permits.

- (1) Neither a License, Permit nor any of Grantee's interest therein or in the facilities shall be sold, assigned, transferred, pledged, leased, sublet, hypothecated, or mortgaged in any manner, in whole or in part, to any person or entity, nor shall title thereto,

either legal or equitable, or any right or interest therein, or any property or assets relating to a License or Permit or the facilities, pass to or vest in any person or the facilities, pass to or vest in any person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Grantee shall not otherwise provide service to a person or entity who the City contends is required to obtain a License or Permit from the City and who lacks such License or Permit. Nothing herein shall prevent Grantee from assigning its rights and obligations to an affiliate (defined as any entity directly owned by Grantee or a parent entity of Grantee) or subsidiary of Grantee upon notice to the City. Any assignment or transfer to a subsidiary or affiliate of Grantee shall not relieve Grantee of its liability hereunder. Further, nothing herein shall prevent or prohibit Grantee or any of its parents, subsidiaries, or affiliates from granting a security interest in the License or Permit or the facilities arising from a financing transaction. The grant or waiver of any one or more of said consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any said consent constitute a waiver of any other rights of the City. In the event of a foreclosure proceeding pursuant to the enforcement of a security interest granted by Grantee, or any parent or subsidiary of Grantee, the City shall have the right to approve the purchaser of the License or Permit and/or the facilities at a foreclosure sale, which approval shall not be unreasonably withheld or unduly delayed. The prohibition against sales, assignments, transfer, and similar actions shall also fully apply to any transfer of control of Grantee ("Control") and such transfer of Control shall also require the prior written approval of the City which approval shall not be unreasonably withheld or unduly delayed.

- (2) No License or Permit nor any part or portion of its interest in the License or Permit may be sold, transferred, or assigned until the facilities, equipment, and personnel which the Grantee has proposed in the current License or Permit application to provide and install pursuant to the License or Permit are one hundred (100%) percent completed and operational for a minimum period of three (3) years, except to Grantee's parent, affiliate, or subsidiary.
- (3) Any attempted transfer of the License or Permit, facilities, control or similar action by Grantee in violation of this Section

shall be ineffective and void and shall constitute a material event of default by Grantee.

18. Construction and Performance Guarantee and Letter of Credit.

A Grantee shall, prior to construction and within thirty (30) days of execution of a License or Permit, file with the City Clerk, a letter of credit or cash deposit in a reasonable amount set by the terms of the License or Permit based upon the construction cost of the lines to be installed upon, over, across, or under the roads, bridges, streets, rights-of-way or easements in the City. The Grantee and the City Engineer may make arrangements for the periodic release of the cash deposit or letter of credit in proportionate amounts as progress is made, as provided in Chapter 33.

19. Termination.

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to terminate a License or Permit and all rights and privileges of a Grantee in any of the following events or for any of the following reasons:

- (1) A Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the License or Permit or has, by act or omission, violated any term or condition; or
- (2) A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (3) All or part of a Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within ninety (90) days from such sale; or
- (4) A Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City under the License or Permit; or
- (5) City condemns all of the property of a Grantee within the City by the lawful exercise of eminent domain, or
- (6) The Grantee abandons the Telecommunications System or fails to seek renewal of its License or Permit.
- (7) No termination, except by reason of condemnation, shall be effective unless or until the City shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date, which resolution shall not be adopted

without thirty (30) days prior notice to Grantee and an opportunity for Grantee to be heard on the proposed resolution.

20. Removal.

- (1) Upon expiration, termination of a License or Permit, if the License or Permit is not renewed, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the License or Permit. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the License or Permit of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the License or Permit. Underground cable and conduit in the streets and rights-of-way which is not removed shall be deemed abandoned and title shall be vested in the City.
- (2) Upon expiration, termination, or revocation of a License or Permit, if the License or Permit is not renewed, a Grantee, at its sole expense, shall, unless relieved of the obligation by the City, remove from the streets all above ground elements of the Telecommunications System, including but not limited to pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- (3) Grantee shall apply for and obtain such encroachment permits, Licenses, authorizations, or other approvals and pay such fees and deposit such security as required by applicable law or ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the streets and rights-of-way to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than twelve (12) months from expiration, termination or revocation.

21. Continuity of Service.

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee of a Permit are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Telecommunications System or the City terminates, revokes, or fails to renew a Permit within a reasonable time, a Grantee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of Grantee, the previous Grantee shall cooperate with the new Grantee in maintaining continuity of service to all Subscribers. In the event that interruption of service is required by a Grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the impact on Subscribers is at a minimum. Records of such interruption shall be kept by the Grantee.

22. Acceptance of Agreement and Incorporation of Application and Ordinance by Reference.

Upon execution of a License or Permit by a Grantee, the Grantee agrees to be bound by all of its terms and conditions and accepts unconditionally and promises to comply with and abide by all of their terms, provisions and conditions. A Grantee also agrees to provide all services set forth in its application and proposal, and, by its acceptance of the License or Permit, a Grantee specifically grants and agrees that its application and proposal is thereby incorporated by reference and made a part of the License or Permit. In addition, a Grantee specifically agrees that this Ordinance of the City is incorporated by reference and made a part of the License or Permit. In the event of a conflict between the application and proposal of the Grantee, the Ordinance, and the License or Permit, the Ordinance shall prevail.

23. Severability.

If any section, subsection, sentence, clause, phrase, or word of the License or Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not render invalid nor terminate the License or Permit.

24. Tampering and Fraudulent Connections or Sales.

- (1) No person, whether or not a Subscriber or user of the Telecommunications System, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the Grantee, or to commit any act with an intent to cause such removal or damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment, apparatus, or appurtenance of the Grantee with the intent to obtain a signal or impulse from the Telecommunications System without authorization from or compensation to the Grantee, or obtain Telecommunications Service, or sell, rent, offer or advertise for sale, rental, or use any instrument, apparatus, device, or plans, specifications, or instructions for making or assembling the same to connect to the Grantee's Telecommunication System with intent to cheat or defraud the Grantee of any lawful charge to which it is entitled.
- (2) The prohibitions, penalties and remedies set forth in this section are in addition to any prohibitions, penalties, and remedies for theft of service provided by state and federal law.

25. Equal Application.

The provisions of this ordinance shall be imposed upon and enforced against all Telecommunications Systems in the City requiring a License or Permit except as provided in Section 9(4)(d).

26. Compliance with Law.

All Grantees and the City shall comply with all laws, rules, regulations and orders in the exercise and performance of their rights and obligations under this ordinance and under any Permit or Licenses.